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No. 87-1756

In the Supreme Court of the United States

OCTOBER TERM 1987

THE HONORABLE DON SUNDQUIST, PETITIONER,

v.

WAYNE CHASTAIN, RESPONDENT.

SUPPLEMENTAL BRIEF IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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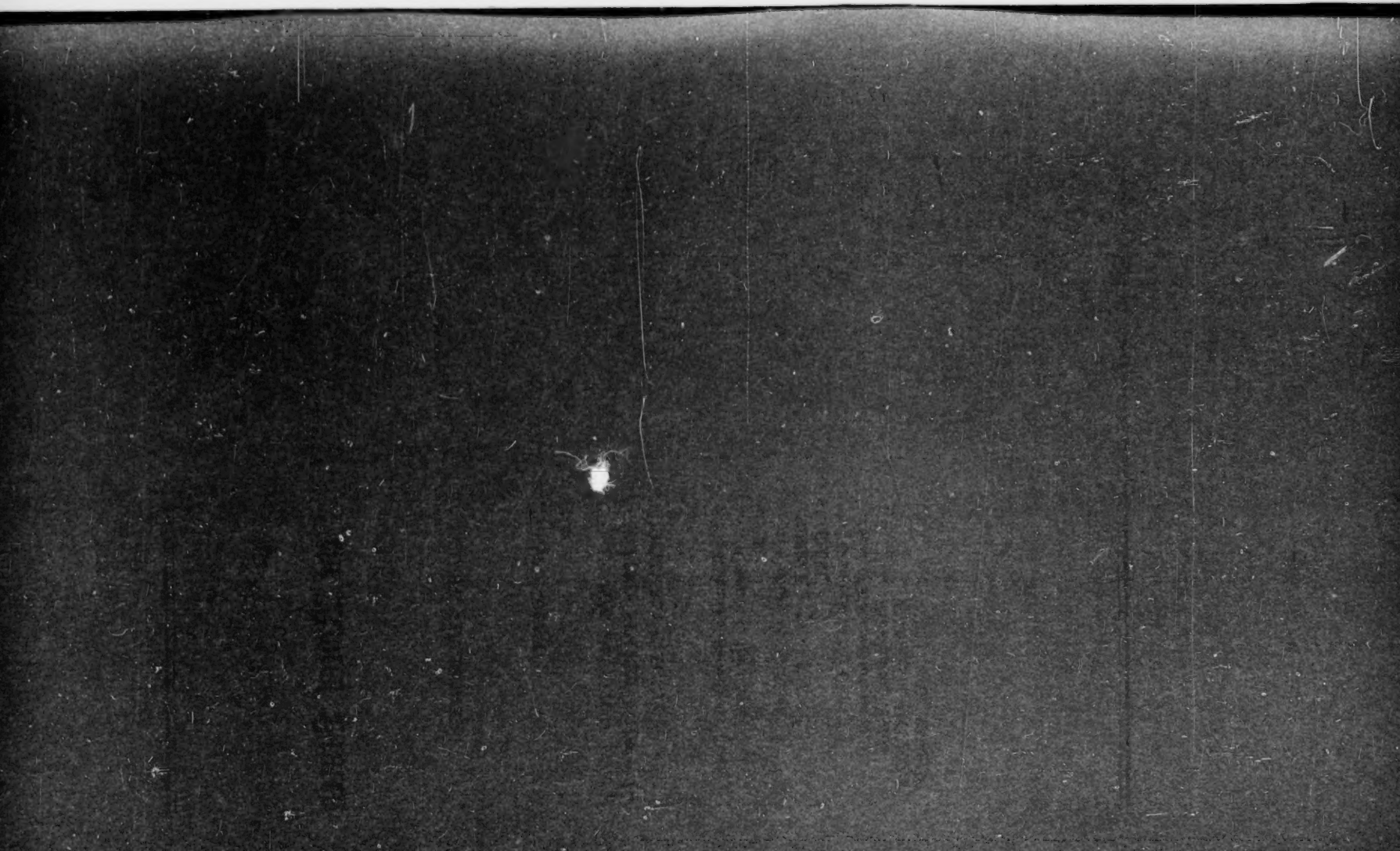
MAY 1988



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SUPPLEMENTAL BRIEF IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

On May 12, 1988, the United States House of Representatives, by the unanimous vote of 413-0, adopted H.R. Res. 446, 100th Cong., 2d Sess. ("Foley-Michel Resolution"), a privileged resolution specifically relating to this litigation.[1] By adoption of the resolution, the House of Representatives declared its belief that this case presents issues of vital importance to the "necessary and proper functioning of the House of Representatives as a coordinate branch of government" and therefore, the House "respectfully requests the Supreme Court of the United States to grant a writ of certiorari so that it may review this matter. . . ." App. A at 3a. Pursuant to Rule 22.6 of the Rules of the Supreme Court, this supplemental brief calls to the Court's attention this new legislation.

House Resolution 446 was introduced by Majority Leader Thomas S. Foley on behalf of himself and Republican Leader Robert Michel. In announcing his intention to offer the privileged resolution, Majority Leader Foley described the resolution as follows:

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[1] The full text of the Resolution appears as Appendix A.

> It involves the question of whether Members of Congress will retain official immunity for more than purely legislative acts.
>
> If the current decision of the U.S. Court of Appeals were to remain on the books, there would be a situation which would call into doubt the vulnerability of every Member of this body to civil suit for acts that have always been considered part of the official responsibility of Members, and the potential liability to each Member should be understood clearly.
>
> Second, the inhibition that would be imposed on Members in carrying out representation of their constituents in a manner long understood, in fact from the foundation of this Republic understood to be a part of the legislative responsibility of individual Members. This is not a partisan matter. It is a matter of the privileges of this House and the privileges of Members, and the purpose of this resolution is to send an overwhelming, unanimous vote of this body to the Supreme Court respectfully asking that they take up and review this case.
>
> So I hope that there will be no misunderstanding about it. It goes back, in fact, to precedents in the 14th Century in the history of the House of Commons, and I do not wish any Member to underestimate the signal importance of this matter to the functioning of the House of Representatives and to his or her individual responsibilities as Members.

134 Cong. Rec. H 3168 (daily ed. May 11, 1988).

The Foley-Michel Resolution clearly states the belief of the House of Representatives that "the decision of the divided panel of the Court of Appeals raises the most serious concerns for the doctrine of separation of powers provided in the Constitution and for the ancient and historic rights and privileges of the House. . . ." App. A at 2a. The Foley-Michel Resolution then declares the House's perception that "the decision of the divided panel of the Court of Appeals, if left standing, will have an adverse effect on the performance of important official duties by Members of the House and will deprive citizens of infor-

mation about the functioning of their government. . . ." App. A. at 2a-3a.

The motivation and intent of the House of Representatives in adopting this unusual resolution is easily gleaned from the "resolved" clauses of the resolution:

> Resolved, That the House of Representatives considers the informing of citizens and executive branch agencies on matters of public importance to be a part of the official duties of a Member of the House; and be it further
>
> Resolved, That the House of Representatives considers it to be appropriate that Members of the House engaged in the performance of their official duties will be treated by the Courts with the same respect and protection presently afforded by the Courts to all other public officials; and be it further
>
> Resolved, That the House of Representatives views with deep concern the decision of the divided panel of the Court of Appeals of the District of Columbia Circuit in the case of Wayne Chastain v. The Honorable Don Sundquist because of its impact on the necessary and proper functioning of the House of Representatives as a coordinate branch of government and as the elected representatives of the American people; and be it further
>
> Resolved, That the House of Representatives respectfully requests the Supreme Court of the United States to grant a writ of certiorari so that it may review this matter, and reach a just result; and be it further
>
> Resolved, That the Clerk of the House shall forthwith transmit a certified copy of this resolution to the Honorable Clerk of the Supreme Court.

App. A at 3a.

The May 12, 1988, debate on the House floor with respect to the resolution provides a clear indication of the House's view that Supreme Court review is necessary in this case.[2] Majority Leader Foley, the resolution's author and floor manager, described to the House the purpose of

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[2] The House floor debate is reproduced in its entirety as Appendix B.

the resolution. "The resolution expresses, to the Supreme Court of the United States, we will be asking that the Court grant review of a recent decision of the Federal Court of Appeals for the District of Columbia Circuit which impacts on the day-to-day operation of the House and its Members." App. B at 4a.

Majority Leader Foley then described the factual and procedural background of Representative Don Sundquist's Petition for Certiorari. He paid particular attention to what he described as the "strange treatment of the matter by the court of appeals. . . ." App. B at 7a. Recounting the Circuit's denial of Representative Sundquist's suggestion of a rehearing en banc, Majority Leader Foley informed the House that "[t]he 6 to 5 plurality vote constituted only half, not a majority, of all judges in regular active service. Therefore, the opinion of the two-judge majority stands as the decision of the circuit. Thus, a decision which affects each and every Member of Congress in his day-to-day performance of his official duties remains in effect even though a plurality of the judges on the circuit have called for a reassessment of that opinion." App. B at 6a–7a.

As the Majority Leader expressed to the House, "[t]his strange treatment of the matter by the court of appeals simply highlights the need for the Supreme Court to review this decision." He described the intent and purpose of the resolution:

> What we do today is to express the institutional desire of the House, as a coordinate branch of government, to obtain this Supreme Court review. The resolution does not ask the Court to decide the case in any particular fashion; though we may all have thoughts on what the proper outcome should be. However, it should be clear that this resolution does not seek any particular outcome, it only seeks to have the Supreme Court review this matter.

App. B. at 7a.

The Republican Leader, Robert Michel, co-sponsor of the resolution, spoke next. He proclaimed that the "reso-

lution has one central and vital purpose—and that is to urge the Supreme Court to clarify the constitutional parameters of our official acts as Representatives of the American people." App. B at 8a. Republican Leader Michel stated his belief that "it is essential that the underlying case, Chastain against Sundquist receive the total and thorough attention of our highest judicial body." App. B at 8a. He summarized his view on the matter thusly:

> That is why, Mr. Speaker, this case is so important. We must be able to speak and act freely within the bounds of our official duties if we are to continue to represent a free and strong people. If we are unable to speak forthrightly and fairly within the bounds of our official duties, we will be less able to represent the people we are elected to serve.

App. B at 10a–11a.

The impact of the Court of Appeals decision on the continued vitality of the representative process was a refrain that several Members of the House sounded during the consideration of H.R. Res. 446. Representative Sam Gejdenson pointed out that "[i]t is clear that among our primary responsibilities is being advocates for our constituents within the bureaucracy and challenges that they face. Half our work at times may be the work of serving our constituents." App. B at 13a. Representative Gejdenson described this constituent service as that which "restores the faith of people in the governmental process[, people] who have been trampled by the bureaucracy or larger corporations. Often our role as advocates may be as important as our role as legislators in seeing that this Government serves its people." App. B at 14a. In supporting the resolution, Representative Gejdenson stated that he was "particularly concerned about the impact th[is] case may have on the ability of Representatives and Senators to help their constituents who have trouble with Federal agencies." App. B at 14a.

Representative Henry Hyde harkened back to the protest written by Thomas Jefferson and James Madison

when the judiciary sought to interpose itself between a Member of the House and his constituents in the earliest days of our Republic. App. B at 15a–16a. Representative Hyde applied teachings of that constitutional experience to the present situation faced by Congressman Sundquist.

> Mr. Speaker. I know of few observations so prophetic as Jefferson's, when he says that constituent newsletters are "the substance of representation" and all the rest merely "the shadow." I know that I do not relish being fitted for a judicial muzzle. I find myself in firm agreement with our former colleague, Abner Mikva, who was the vigorously dissenting judge in Congressman Sundquist's case. In this case, his dissent has truly said to those of us on opposite sides of the aisle, that while we may disagree with each other about what we say, we must defend each other's right to say it. As Judge Mikva warned, without judicial protection for communication with constituents, "we are liable to have a Congress that is deterred from the vigorous exercise of its constitutional responsibilities."
>
> And so, on the eve of the bicentennial year of the Constitution's ratification, I can think of no case more worthy than this of the granting of the writ of certiorari by the Supreme Court. I urge adoption of a resolution to recommend this course to the Supreme Court.

App B. at 16a–17a.

Finally, Representatives Charles Schumer and Trent Lott spoke of the chilling effect on the representational process of the Court of Appeals opinion. Congressman Lott described the opinion as "cast[ing] a pall over the ability of Members of Congress to take part in public debate." He found that "[i]t is a very important part of our responsibility as a Member of Congress to be able to speak out on these public issues." App. B at 24a–25a.

Representative Lott, the Republican Whip, analyzed the logic and impact of the Court of Appeals opinion in the following stark terms:

> It astonishes me that a Federal court could say that every other officer of the Federal Government receives official protection, but Members of Congress do not, when speaking out on public issues within their responsibilities.
>
> I sincerely hope that the Supreme Court will review this case and in its most careful manner will reverse the lower court decision. It does go to the basic fundamentals of our guarantees as Members of Congress, and I do think this is a forerunner of what could be a whole number of this type of lawsuits being brought against Members of Congress to tie us up and to shut us up.

App. B. at 25a.

Representative Schumer also noted the chilling effect the Court of Appeals decision would have. Members, he noted, would effectively "be sealed off from communicating with the people we represent. . . ." He summarized the intrusion of the Court of Appeals opinion:

> How empty would the right of the people to petition the Congress be if the Congress and its Members could not communicate back to those who petition. The intrusion by the court of appeals into this fundamental process of give and take between the Congress and the people must be undone.

App. B. at 19a–20a.

As this debate and the Foley-Michel Resolution that was adopted by the unanimous vote of 413–0 amply demonstrate, the issues raised in Congressman Sundquist's petition are of singular importance to the House as a coordinate branch of government. This Court should heed the call of the House and grant the petition so that it, as the highest judicial tribunal can decide the question presented: Does the doctrine of official immunity, which the

courts have extended to all other public officials, apply to Members of Congress for actions taken in their official though non-legislative roles?

Respectfully submitted,

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MAY 1988.

APPENDIX A

H. Res. 446

In the House of Representatives, U.S.,

May 12, 1988.

Whereas, consistent with the Constitution and the history of parliamentary bodies, the Members of the United States House of Representatives have always considered it to be an integral part of the official responsibilities of Members of Congress to inform the citizens they represent and the agencies of government regarding issues of public importance;

Whereas, the judiciary of the United States has in a long series of decisions established the doctrine of official immunity pursuant to which all public officials are provided certain protections from civil liability when engaged in the good faith performance of their official functions:

Whereas, in 1985 Representative Don Sundquist, a Member of this House, communicated with the Attorney General of the United States, the Federal Legal Services Corporation, and the citizens of the congressional district which he represents, informing them of an ongoing issue of public importance, a controversy relating to the expenditure of federal funds by the Memphis Area Legal Services in that federally funded organization's continuing dispute with the State of Tennessee's judicial branch;

Whereas, Wayne Chastain an attorney with the Memphis Area Legal Services filed suit against Representative Sundquist seeking in excess of one million dollars in personal damages based on Representative Sundquist's official communications with the Attorney General of the United States, the Federal Legal Services Corporation, and the citizens of Tennessee;

Whereas, the United States District Court for the District of Columbia dismissed the suit, holding that Representative Sundquist's actions were official and that for the good faith performance of their official duties Members of Congress, like all other public officials, are protected from civil liability;

Whereas, on November 6, 1987, a divided panel of the United States Court of Appeals for the District of Columbia Circuit, departed from the precedent of that Court and the Supreme Court and reversed the ruling of the District Court holding that the doctrine of official immunity, which provides certain protections from civil liability to all public officials engaged in the good faith performance of their official duties, was not applicable to the official actions of a Member of Congress;

Whereas, despite the expressed desire of a majority of the participating judges of the Court of Appeals for the District of Columbia Circuit to review the decision of the panel's majority by rehearing the case en banc, the en banc Court of Appeals declined to rehear the case;

Whereas, Representative Sundquist, through the Office of General Counsel to the Clerk of the House, is presently seeking a writ of certiorari from the Supreme Court of the United States;

Whereas, the decision of the divided panel of the Court of Appeals raises the most serious concerns for the doctrine of separation of powers provided in the Constitution and for the ancient and historic rights and privileges of the House; and

Whereas, the decision of the divided panel of the Court of Appeals, if left standing, will have an adverse effect on

the performance of important official duties by Members of the House and will deprive citizens of an irreplaceable source of information about the functioning of their government: Now, therefore, be it

Resolved, That the House of Representatives considers the informing of citizens and executive branch agencies on matters of public importance to be a part of the official duties of a Member of the House; and be it further

Resolved, That the House of Representatives considers it to be appropriate that Members of the House engaged in the performance of their official duties will be treated by the Courts with the same respect and protection presently afforded by the Courts to all other public officials; and be it further

Resolved, That the House of Representatives views with deep concern the decision of the divided panel of the Court of Appeals of the District of Columbia Circuit in the case of Wayne Chastain v. The Honorable Don Sundquist because of its impact on the necessary and proper functioning of the House of Representatives as a coordinate branch of government and as the elected representatives of the American people; and be it further

Resolved, That the House of Representatives respectfully requests the Supreme Court of the United States to grant a writ of certiorari, so that it may review this matter, and reach a just result; and be it further

Resolved, That the Clerk of the House shall forthwith transmit a certified copy of this resolution to the Honorable Clerk of the Supreme Court.

APPENDIX B

Congressional Record

PROCEEDINGS AND DEBATES OF THE 100th CONGRESS, SECOND SESSION

Vol. 134 WASHINGTON, THURSDAY, MAY 12, 1988 No. 66

House of Representatives

PRIVILEGES OF THE HOUSE—RELATING TO THE DUTIES AND PRIVILEGES OF MEMBERS OF THE HOUSE OF REPRESENTATIVES

Mr. FOLEY. Mr. Speaker, I offer a privileged resolution (H. Res. 446) and ask for its immediate consideration.

The Clerk read the resolution.

The SPEAKER pro tempore (Mr. SCHUMER). The resolution presents a question of privilege, and the Chair recognizes the gentleman from Washington for 1 hour.

Mr. FOLEY. Mr. Speaker, for purposes of debate only, I yield 30 minutes to the distinguished gentleman from Illinois [Mr. MICHEL], pending which I yield myself such time as I may consume.

Mr. FOLEY. Mr. Speaker, on behalf of the Republican leader, Mr. MICHEL and myself, I have introduced this privileged resolution. The resolution expresses, to the Supreme Court of the United States, a respectful request of this House. By adopting this resolution we will be asking that the Court grant a review of a recent decision of the Federal Court of Appeals for the District of Columbia Circuit which impacts on the day-to-day operation of the House and its Members.

The litigation at issue, Chastain versus Sundquist, is a civil action which alleges that Congressman SUNDQUIST, our colleague from Tennessee, included defamatory material in a letter which he sent to a Federal agency discussing an issue of public importance and controversy in the Memphis area. Specifically, Representative SUNDQUIST, in his letters and in his discussions with his constituents, expressed his concerns with respect to the operation of a federally funded program, the Memphis Area Legal Services.

Mr. Chastain, an attorney employed by the Memphis Area Legal Services, filed suit against Representative SUNDQUIST. The General Counsel to the Clerk, representing Representative SUNDQUIST, moved for a dismissal. The U.S. District Court for the District of Columbia dismissed the case holding that the Representative had been engaged in the official activities of communicating with Federal agencies and with his constituents on matters of Federal policy, and that when engaged in official actions Members of Congress, like all other public officials, receive the protections of the doctrine of official immunity. Under that long-established judicial doctrine, public officials engaged in the performance of official duties can only be held liable in a civil action for the violation of clearly established standards of constitutional or statutory law. Mr. Chastain's suit did not allege that Representative SUNDQUIST had violated any statutory or constitutional provision and, therefore, the doctrine of official immunity required the dismissal of the lawsuit.

On appeal, however, a divided three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit overturned the dismissal. The two-judge majority wrote that although Mr. SUNDQUIST had certainly been acting within the sphere of his official, though not legislative, duties, Members of Congress, alone among all public officials, are not eligible to receive the protections provided by the doctrine of official immunity. The majority reasoned that since the Constitution provides Members with

an absolute immunity for their legislative actions, no other immunity should be provided. This reasoning leaves Members, who are the only officials the framers of the Constitution believed required an immunity, more exposed to litigation than all other public officials.

Judge Mikva dissented from the ruling of the majority, writing that it made no sense to treat Members in this fashion. Judge Mikva noted that the role of the Representative, today and throughout history, has included many official functions which are not legislative. The dissent then points out that in a departure from the established precedent of this circuit and the Supreme Court, the panel's majority had denied to Members of Congress a protection that the courts had routinely extended to all public officials ranging from Cabinet officers to local postmen. Judge Mikva could have gone further because, in fact, the courts have extended this immunity to cover the official actions of public officials including dog-catchers, local liquor licensing boards, and a variety of judges and court personnel.

After this panel decision, Representative SUNDQUIST sought a rehearing by the entire court of appeals. This request was based on the panel's departure from the established precedent of the circuit and on the serious flaws contained in the two-judge majority's reasoning. Under the rules of this circuit, such a review will be granted if a majority of the judges in regular active service vote to rehear the case. Earlier this year, the court of appeals acted on Representative SUNDQUIST's request for a rehearing. Six judges on the circuit voted to rehear the case. Five judges voted not to rehear the case. Judge Bork, who at the time had announced his departure from the bench was still officially a member of the court, declined to participate. The 6-to-5 plurality vote constituted only half, not a majority, of all judges in regular active service. Therefore, the opinion of the two-judge majority stands as the decision of the circuit. Thus, a decision which affects each and every Member of the Congress in

his day-to-day performance of his official duties remains in effect even though a plurality of the judges on the circuit have called for a reassessment of that opinion.

This strange treatment of the matter by the court of appeals simply highlights the need for the Supreme Court to review this decision. Representative SUNDQUIST has now filed with the Supreme Court a petition for a writ of certiorari. If the Court grants the writ, it will review the decision of the court of appeals. What we do today is to express the institutional desire of the House, as a coordinate branch of government, to obtain this Supreme Court review. The resolution does not ask the Court to decide the case in any particular fashion; though we may all have thoughts on what the proper outcome should be. However, it should be clear that this resolution does not seek any particular outcome, it only seeks to have the Supreme Court review the matter.

This resolution is unusual but not unique. In the 97th Congress, I offered and the House adopted a similar resolution asking the court of appeals to review a decision of a three-judge panel which, on a 2-to-1 vote, had ruled that it was unconstitutional for the House to select and maintain a Chaplain of the House. After the adoption of that resolution, the court of appeals granted a motion for rehearing and vacated the panel's decision. Eventually the constitutionality of our actions in selecting and maintaining a Chaplain was clearly vindicated by the court.

Through this resolution, the House does not take sides in an extra-legislative dispute between persons or policies in the Nation at large. Through all its history, the House has spoken on questions of privilege recognized pursuant in its rule IX as "affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings." This role goes back, beyond even the framing of the Constitution two centuries ago, to the early stirrings of legislative consciousness in the medieval House of Commons. As described in the authoritative treatise on Parliamentary Procedure by Sir Thomas Erskine May, in

"Haxey's Case" in 1396, a member of the House of Commons at first was condemned as a traitor for proposing a bill for reducing the excessive charge of the royal household. The House of Commons came to the aid of Haxey, by successfully asking for reconsideration of the judgment against him, which in review was annulled. So, too, at this time, this House responds to a suit brought against one of its own Members, concerning that Member's own actions, and raising an issue concerning the House's own ability to discharge its responsibilities.

For these reasons, I believe that it is important for the Supreme Court to recognize the vital importance of this question to the House of Representatives and adoption of this resolution will express to the Court the institutional interest in this matter on behalf of the House. I urge all my colleagues to support this resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. MICHEL. Mr. Speaker, I yield myself such time as I may consume.

(Mr. MICHEL asked and was given permission to revise and extend his remarks.)

Mr. MICHEL. Mr. Speaker, I rise in support of this resolution which I have cosponsored with the gentleman from Washington [Mr. FOLEY].

This resolution has one central and vital purpose—and that is to urge the Supreme Court to clarify the constitutional parameters of our official acts as Representatives of the American people.

I believe it is essential that the underlying case, Chastain against Sundquist receive the total and thorough attention of our highest judicial body.

Before addressing some of the substantive issues involved in this case I should like to outline the facts and the pleadings of the case up to this point.

The basic facts are as follows:

In January 1985, our colleague, the gentleman from Tennessee [Mr. SUNDQUIST], acting in his official capacity as a Congressman, sent a letter to the Attorney General

of the United States concerning the activity of a group in his district, the "Memphis Area Legal Services," commonly referred to as MALS.

In this letter Mr. SUNDQUIST alluded to the plaintiff, Mr. Chastain, a staff attorney for MALS, in such a way as to trigger this defamation of character suit. Later, Mr. SUNDQUIST publicized his views concerning Mr. Chastain and MALS in his congressional district.

The defamation of character suit was originally brought in D.C. Superior Court. It was removed by motion of Mr. SUNDQUIST to the U.S. District Court for the District of Columbia where a motion by Mr. SUNDQUIST to dismiss based on official immunity was granted.

However, upon appeal, a divided three-judge panel of the U.S. Circuit Court of Appeals for the District of Columbia reversed the lower court decision and held that "Members of Congress are not entitled to immunity for common law tort suits even if committed while acting in the scope of their official acts."

Mr. SUNDQUIST's motion for reconsideration by the full circuit court failed on a 6-to-5 plurality vote, because at the time Judge Bork, the 12th judge on the circuit, did not vote, and the rules of the court require a majority of all sitting judges. In this case it meant seven, not six, was the required number for a majority.

A petition for a rehearing also failed, so Mr. SUNDQUIST filed for certiorari before the Supreme Court, which now must first decide whether to hear the case, and if so, then decide on its merits.

Before proceeding further I believe we should pause for a moment to reflect on another very important case that bears on this. I refer to Hutchinson versus Proxmire decided by the Supreme Court, some 9 years ago.

In that case, the Supreme Court stated that the "speech or debate clause does not protect transmittal of information by individual Members of Congress by press release and newsletters."

Members will recall that in the Hutchinson case a Member of the Senate in his "golden fleece" award offended a scientist doing research on monkeys at the National Institute of Health.

The Hutchinson case stands as an important landmark of constitutional law, but I do not believe it governs the outcome of the case at hand.

The activity of the legislator in the Sundquist case is, in my opinion, clearly within the perimeters of official acts. Such things as writing to Cabinet officers and informing your constituents are vital, basic and essential functions for any Member of Congress.

There is indeed a large body of law that insulates judges and executive branch officials from tort liability for their official acts. Let us hope the same standard is available to Members of Congress in addition to our precious speech or debate privilege embodied in the text of the Constitution itself.

There are, you know, several ways for the people to have a free voice in the affairs and events of their time. They are allowed to speak individually for themselves under the first amendment and of equal importance, they look to their elected representatives—that's us—to speak up for them.

They are counting on us to speak, not only on the floors of the House and Senate in regular debate, but also through the advancing electronic and ever-expanding means of modern communications.

When the founders codified the speech or debate clause, they also recognized the existence of official immunity but I'm not so sure they ever imagined the television technology that would multiply and transmit the words and images of this Chamber to millions of television viewers across the Nation and the world.

That is why, Mr. Speaker, this case is so important. We must be able to speak and act freely within the bounds of our official duties if we are to continue to represent a free and strong people. If we are unable to speak forthrightly

and fairly within the bounds of our official duties, we will be less able to represent the people we are elected to serve.

That is why, Mr. Speaker, this resolution, like the resolution we adopted 6 years ago petitioning the full court of appeals to hear the Chaplain case, should be overwhelmingly adopted today.

Mr. Speaker, I would ask then to include with my remarks at the conclusion of my opening remarks the text of our "Dear Colleague" letter that the gentleman from Washington [Mr. FOLEY] and I jointly signed to the membership.

I will reserve the balance of my time.

HOUSE OF REPRESENTATIVES,
Washington, DC.

DEAR COLLEAGUE: On Wednesday, May 11, 1988, we will seek floor consideration of a privileged resolution. The resolution requests the Supreme Court to review a recent decision of the United States Court of Appeals for the District of Columbia Circuit in *Chastain* v. *Sundquist.* The Speaker and the Bipartisan Leadership of the House believe that the opinion of the divided panel of the Court of Appeals represents a significant departure from established precedent and seriously threatens the proper functioning of Members of the House as representatives of the American people.

The Court of Appeals has held that Members of Congress do not receive the protections provided to all other public officials under the doctrine of official immunity. This ruling was issued, and permitted to stand, by a sharply divided Court of Appeals in a million dollar lawsuit brought against our colleague, Don Sundquist.

Congressman Sundquist had written letters to the appropriate Executive Branch officials expressing his concern with the allocation of resources, and the manner of operation, of the Memphis Area Legal Services, a federally funded entity. He also brought these concerns on this

ongoing public controversy to the attention of his constituents.

A lawyer, who was mentioned in one of the letters, brought suit against Congressman Sundquist alleging that the communications with the Executive Branch and with the public had been defamatory. The suit sought in excess of one million dollars in damages.

Congressman Sundquist was represented by the General Counsel to the Clerk of the House. The District Court dismissed the suit, holding that Congressman Sundquist had been engaged in his official duties and, therefore, was protected by the doctrine of official immunity. Pursuant to that doctrine, all public officials who are engaged in the discretionary performance of their official functions can only be subjected to suit and liability for violations of clearly established standards of statutory or constitutional law. Since the Plaintiff had not alleged that Congressman Sundquist had violated any statute or constitutional provision, the District Court dismissed the case.

On appeal a three-judge panel ruled, on a two-to-one vote, that Members of Congress engaged in official, but not legislative actions, receive no protection whatsoever. The justification for this treatment, which differs from the treatment accorded every other public official at all levels and in all branches of government, was that the Constitution provides Members with an absolute privilege for legislative actions under the Speech or Debate Clause and that, therefore, no other privilege would apply.

Judge Mikva, a former Member of the House, dissented and wrote a strongly worded opinion which argued for the application of the immunity and pointed out that the two-judge majority was departing from the established precedent of the Court of Appeals.

Congressman Sundquist sought to have the decision reviewed by the full Court of Appeals, but despite the agreement of a six-judge plurality that the panel's decision should be reviewed, the full court declined to rehear

the case. Congressman Sundquist is presently seeking a review of the matter by the Supreme Court.

Our resolution simply requests the Supreme Court to review the case. Adoption of the resolution will not ask the Court to rule in any particular fashion on the merits of Congressman Sundquist's argument but will highlight for the Court the extreme importance of this question to all Members of the House. Every one of us is called upon on a daily basis to perform many official functions which are not integral parts of the legislative process. The job of a Congressman extends far beyond the confines of formulating, debating and acting on legislative proposals. Each of us is in daily contact with Executive agencies and with our constituents. Part of our task is to bridge the gap between the federal government and the citizens we represent. It is important that we be able to attend to these responsibilities without unnecessary fear or inconvenience from litigation. The same reasoning that has led the Judicial Branch to provide a degree of protection to Executive and Judicial Branch officials ranging from cabinet officers to local dog catchers should lead the Court to review a decision denying that protection to Members of Congress.

We hope you will support our privileged resolution.

THOMAS S. FOLEY,
Majority Leader.
ROBERT H. MICHEL,
Republican Leader.

Mr. FOLEY. Mr. Speaker, I yield to the gentleman from Connecticut [Mr. GEJDENSON].

(Mr. GEJDENSON asked and was given permission to revise and extend his remarks.)

Mr. GEJDENSON. Mr. Speaker, I join with my colleagues in support of this resolution. It is clear that among our primary responsibilities is being advocates for our constituents within the bureaucracy and challenges that they face. Half of our work at times may be the work of serving our constituents.

When you take a look at the volume of our work of the Congress as a whole, some estimate beyond a million cases a year, that is what restores the faith of people in the governmental process who have been trampled by the bureaucracy or larger corporations. Often our role as advocates may be as important as our role as legislators in seeing that this Government serves its people.

I applaud the efforts of the gentleman from Washington [Mr. FOLEY], the majority leader, and the gentleman from Illinois [Mr. MICHEL], the minority leader, on this particular resolution. I urge all of my colleagues to support it.

Mr. Speaker, I rise in support of the resolution asking the Supreme Court to consider the Sundquist case. I am particularly concerned about the impact that case may have on the ability of Representatives and Senators to help their constituents who have trouble with Federal agencies.

While we do not have precise figures, it is a fair estimate that Congress handles over a million constituent cases a year. These include helping constituents on matters of social security, tax, veteran's benefits, immigration, Medicare and Medicaid, and the whole array of problems with the Federal Government.

The help we give constituents is a vital part of their lives, and a major part of our responsibility in holding office. Yet, the Sundquist decision says that when we help on constituent case matters, we are mere volunteers. That decision says that we lack the immunity protection against litigation that every other Federal officer has.

This means that if anyone involved in a constituent case becomes dissatisfied or angry, they can sue us under some negligence theory or other theory, and we will not have any official protection. It involves the courts deeply in the relationship of constituents and their representatives. Quite clearly, the decision puts in doubt our ability to perform casework any more.

An obstacle to our performing casework imperils one of the Congress' most useful public functions. The Supreme Court should take this case, to decide whether the lower court's doctrine squares with the important role casework plays in making the Federal Government responsible to the people.

Mr. MICHEL. Mr. Speaker, I yield 4 minutes to the gentleman from Illinois [Mr. HYDE].

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, I strongly support this bipartisan resolution to request that the Supreme Court grant the writ of certiorari and review the case in which a lower court held that our colleague, Congressman DON SUNDQUIST, would not receive official immunity for addressing the Attorney General on a public issue, or even for communicating with his constituents on that issue.

Two centuries ago, Thomas Jefferson and James Madison expressed the vital part played in the separation of powers by Members' speech in their "Protest against interference of Judiciary between Representative and Constituent," reprinted in volume 8 of the collected "Works of Thomas Jefferson." Jefferson and Madison's attention was attracted, and their indignation aroused, by a threat to the Representative from their own Virginia district, Samuel Jordan Cabell.

Congressman Cabell had sent his constituents a "circular letter," what we would today call a newsletter—only in those days it was circulated from constituent to constituent as a treasured item, a kinder fate than some of ours meet, I fear. Like any typical opposition newsletter, it blamed the administration for all problems in foreign affairs, particularly, at that time, the conduct of President John Adams' administration with respect to the war in France following the French Revolution.

In response, a grand jury was convened to inquire into the "unfounded calumnies" contained in the circular letter, and whether to charge the Congressman with

criminal defamation. In their "Protest," Jefferson and Madison defended the Congressman saying that "the people have professed the right to being governed by laws to which they have consented by representatives chosen by themselves immediately" and therefore:

> * * * in order to give to the will of the people the influence it ought to have, and the information which may enable them to exercise it usefully, it was part of the common law, adopted as the law of this land, that their representatives, in the discharge of their functions, should be free from the cognizance or coercion of the coordinate branches, Judiciary and Executive; and that their communications with their constituents should of right, as of duty also, be free, [and] full. * * *

Jefferson and Madison went on to warn of what the effect would be if the Federal judiciary took over this area, in words that we might use today, if we had the deeper understanding of the Constitution they possessed—

> [F]or the Judiciary to interpose in the legislative department between the constituent and his representative, to control them in the exercise of their functions or duties towards each other * * * is to put the legislative department under the feet of the Judiciary, is to leave us, indeed, the shadow, but to take away the substance of representation, which requires essentially that the representative be as free as his constituents would be * * *; is to do away with the influence of the people over the proceedings of their representatives by excluding [them] from knowledge. * * *

Mr. Speaker, I know of few observations so prophetic as Jefferson's, when he says that constituent newsletters are "the substance of representation" and all the rest merely "the shadow." I know that I do not relish being fitted for a judicial muzzle. I find myself in firm agreement with our former colleague, Abner Mikva, who was the vigorously dissenting judge in Congressman SUNDQUIST's case. In this case, his dissent has truly said to those of us on

opposite sides of the aisle, that while we may disagree with each other about what we say, we must defend each other's right to say it. As Judge Mikva warned, without judicial protection for communication with constituents, "we are liable to have a Congress that is deterred from the vigorous exercise of its constitutional responsibilities."

And so, on the eve of the bicentennial year of the Constitution's ratification, I can think of no case more worthy than this of the granting of the writ of certiorari by the Supreme Court. I urge adoption of a resolution to recommend this course to the Supreme Court.

Mr. FOLEY. Mr. Speaker, I yield 2 minutes to the gentleman from Tennessee [Mr. FORD].

(Mr. FORD of Tennessee asked and was given permission to revise and extend his remarks.)

Mr. FORD of Tennessee. Mr. Speaker, I rise in strong support of the resolution urging the Supreme Court to review and overturn the court of appeals decision in Chastain versus Sunquist.

The libel suit against our colleague grew out of a political dispute in Memphis over the propriety of certain techniques for enforcing child support laws and over the proper allocation of the resources of the Legal Services Corporation. In the past, Mr. SUNDQUIST and I have been on opposite sides of the fence with regard to various political disputes. It is quite possible that we will continue to disagree about many subjects.

There is no disagreement between us, however, about the court of appeal's decision or about the lawsuit. The court's decision is very wrong, and this libel suit should be dismissed. Decisions such as this threaten to muzzle the Members of this body and choke off our free and open communications with our constituents.

Mr. Speaker, as many in this body are aware, I myself was recently the victim of an unconstitutional attempt to silence me and prevent me from fulfilling my obligation to communicate with and inform my constituents. A dis-

trict court in my home State of Tennessee issued a gag order that prevented me from discussing or refuting charges made against me.

Fortunately, the Sixth Circuit Court of Appeals recognized how fundamentally improper it was to interfere with the communications between a Representative and the people he represents. The sixth circuit relied extensively on the works of Thomas Jefferson and James Madison. It quoted their comment that communications with constituents "should of right, as of duty also, be free, full, and unawed by any." The sixth circuit understood that a "Representative's legislative role is not limited to formal speech and debate in Congress but includes communication with the electorate." By ignoring these crucial points, the D.C. Circuit has opened the door to an avalanche of harassing and vexatious litigation. The Supreme Court should review this harmful decision and reverse it.

Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentleman from Wyoming [Mr. CHENEY].

Mr. CHENEY. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I wish to express my alarm concerning the recent decision against Representative DON SUNDQUIST. The lower court in that case has announced that legislators do not have the official immunity that all other officials have. That case suggests that legislators can be sued for what they say in public and for what they write to executive agency officials.

I want to take a moment to discuss what this decision means, not only to us, but to all legislators. The somewhat twisted logic of the lower court which gave this decision, imperils State legislators quite as much as Members of Congress. That is, if Members of Congress are mere volunteers when they speak out publicly, or write letters to executive agencies, then State legislators are also volunteers when they speak out or write.

Yet, while there are only 535 Members of Congress, there are 50 State legislatures, and thousands of city councils and other local legislative bodies. We are talking about thousands and thousands of State and local legislators. If the Federal courts are going to police what State and local legislators do and say, they will launch a major Federal invasion into how State governments work.

The last thing we need is for the Federal courts, whose dockets are already overloaded, to take on policing the activity and debates of State legislators. I therefore join in supporting the House's request that the Supreme Court take up this case.

Mr. FOLEY. Mr. Speaker, I yield 2 minutes to the gentleman from New York [Mr. SCHUMER].

(Mr. SCHUMER asked and was given permission to revise and extend his remarks.)

Mr. SCHUMER. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I concur in everything that has been said so far by the gentleman from Washington [Mr. FOLEY] and the gentleman from Illinois [Mr. MICHEL].

Mr. Speaker, the court's decision in the Sundquist cast poses a dangerous threat to one of the most basic of the responsibilities that each of us was elected to carry out.

The framers of our Constitution, in their wisdom, could not have foreseen that this body would be sealed off from communicating with the people whom we represent by a court's decision. Those framers deliberately established a legislature that was to be open and responsible to the people, not a star Chamber in which decisions and the process by which those decisions are reached remain forever mysterious. The Supreme Court should undo the damage.

How empty would the right of the people to petition the Congress be if the Congress and its Members could not communicate back to those who petition. The intrusion by the court of appeals into this fundamental process

of give and take between the Congress and the people must be undone.

Mr. LOTT. Mr. Speaker, I yield 1 minute to the gentleman from Tennessee [Mr. SUNDQUIST].

Mr. SUNDQUIST. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, since I am a direct beneficiary of this legislation, I will refrain from casting a yea or nay vote. I will be voting "present" on this resolution in the event of a recorded vote.

Mr. FOLEY. Mr. Speaker, I yield 2 minutes to the gentleman from West Virginia [Mr. WISE].

Mr. WISE. Mr. Speaker, I appreciate the gentleman from Washington, the majority leader, for yielding me this time.

Mr. Speaker, I too wish to rise in strong support of this resolution.

If Members are sitting in their offices, think about all of the mail that has come in, think about all of the inquiries that have gone out to Federal agencies.

The situation that the gentleman from Tennessee [Mr. SUNDQUIST] is in I find myself in, but perhaps at a little earlier stage. I have not yet been sued, but the implication is clear that I may be because I got involved in a controversy in my district, and because of the request of some constituents I requested a Federal agency to perform an investigation. That is right, to perform an investigation. That was it.

Immediately I get a letter from a law firm with at least five names in the letterhead, that is always a tip off, urging or demanding I retract my statements or the implication is that litigation will follow.

So I say to my colleages somewhere sitting in their offices right now is a letter with those possible implications. That is the significance of this case, and that is why I strongly urge a unanimous vote in favor of this resolution.

Mr. LOTT. Mr. Speaker, I yield 2 minutes to the gentleman from Florida [Mr. MCCOLLUM].

(Mr. McCOLLUM asked and was given permission to revise and extend his remarks.)

Mr. McCOLLUM. Mr. Speaker, I strongly concur in this resolution. I believe the speech and debate clause is extremely important for the Members of this body to conduct their business and for the country to be protected.

But having experienced a good deal of study of this issue during the course of the Iran-Contra hearings, I do want to point up some distinctions involved in this matter. First of all, the letter involving the gentleman from Tennessee [Mr. SUNDQUIST], was something that he wrote to an agency of Government as a part of his official duties. There is no question in my mind, and I do not think in reading the law there should be a question in the court's mind when they finally analyze this, if they take it up, that anything to do with actions on the floor, anything to do with actions in the committees or in an official capacity, such as this letter, should be protected. That is the only way that we can conduct business in a civil society.

On the other hand, there is an area in which things can be protected and should be unprotected that Members of Congress can do in the way of communicating while they are holding office, and to me one of the most egregious things that a Member of this body or any other body can do while he is holding office is to leak highly classified security information to people who do not have any official reason to have that information.

I certainly do not believe that whatever we pass today or whatever the Supreme Court rules on should impinge the opportunity for this body or for future Congresses to restrain Members from that kind of conduct. I do not think it is protected by the speech and debate clause, and my study of the history of the law, and I have conducted quite a bit of study of it, says that is the case.

But I do urge my colleagues to vote unanimously for this resolution. It concerns the official duties of the gentleman from Tennessee [Mr. SUNDQUIST]. If we do not have a ruling on this, there is going to be tremendous impediment to free and open discussion within this Government that we have to have in conducting our affairs.

Mr. HUGHES. Mr. Speaker, I rise in stong support of the resolution.

I am very concerned that the speech and debate clause of the Constitution is being construed more and more narrowly by the courts in a series of decisions, to the point where it has become almost a meaningless vestige of what was intended by the Framers of the Constitution.

The most recent decision in this line is Chastain versus Sundquist, which held, in essence, that a Member of Congress cannot, in good faith, write to the Attorney General of the United States, about suspected improprieties in the conduct of a federally funded program, without making himself potentially liable for defaming the individuals who are involved in that program.

Mr. Speaker, that just doesn't make sense. It is essentially incomprehensible because, in this particular case, plaintiff and defendant alike agree that the Member of Congress was acting within the scope of his official duties when he contacted the Attorney General.

I don't believe election to Congress should be seen as a license to defame.

But, by the same token, the courts must recognize that debate on public issues does not take place in a vacuum. Rather, it is a public process that, almost by definition, includes an active exchange between the news media, the general public, elected and appointed officials, and everyone else who has an interest in the matter.

We, as elected officials, cannot take part in the process if we are exposed to civil liability everytime we tackle a controversial subject that might invite the attention of the news media.

Our citizens do not send us to Congress so that we can engage in esoteric debate in some quiet corner of the Capitol.

They want to know what we're doing.

They want to know how we feel about what's going on in the public arena.

They want us to be active on behalf of the things they feel are important and that includes, at a minimum, working to eliminate waste, fraud, abuse and impropriety in the conduct of Federal programs.

If I am sitting in my office, and a constituent contacts me to let me know of some impropriety in a federally funded program, should I not bring this to the attention of the proper authorities?

Or, if I feel that the abuse is significant enough, do I not have a duty to raise my voice?

And, if the abuse is a true outrage, do I not have a duty to speak out loud enough for all to hear?

Or instead, perhaps I should think about the possibility that I might be sued, if I speak out. Maybe I should consider that, instead of improving public administration, my actions might just result in days of endless depositions, fishing expeditions through my office files, and all sorts of legal expenses and maybe even a judgment for damages.

In fact, maybe I should just forget the whole thing.

But, Mr. Speaker, that is not our role. We must not forget about, or turn our backs, on the things we believe to be wrong.

Indeed, the history of the speech and debate clause has been traced back through our English heritage to at least the year 1689. Legislative immunity has been seen as critical in fighting against British monarchs who used criminal and civil law to attack and intimidate independent-minded legislators. The Framers of the Constitution sought the same protection for us.

In many respects, the history and development of legislative immunity is one and the same with the history and

development of the system of checks and balances we hold dear in this country, and the idea that each branch of Government in this country is coequal.

Exposing legislators to civil liability, for doing things which are unquestionably within the scope of their official duties, is a step backwards. It is dangerous. It will undermine the ability of elected officials to exercise oversight of the conduct of Government projects and programs. It will unquestionably have a chilling effect on the willingness of Senators and Congressmen to take on controversial subjects.

I urge the overwhelming adoption of this resolution, in hopes that the Supreme Court will overturn this ill-considered decision that is so patently contrary to good government, and the separation of powers.

Mr. FOLEY. Mr. Speaker, I have no further requests for time and I reserve the balance of my time.

Mr. LOTT. Mr. Speaker, I am the final speaker on this side, and I yield myself such time as I might consume.

(Mr. LOTT asked and was given permission to revise and extend his remarks.)

Mr. LOTT. Mr. Speaker, I rise in support of the House's request to the Supreme Court to review the Sundquist case. This decision by a divided lower court held Congressmen liable for expressing their views to the press on public issue. It casts a pall over the ability of Members of Congress to take part in public debate.

In this case, Congressman SUNDQUIST commented on the issues of a dispute between Memphis Area Legal Services, and the juvenile court of that area. That is the type of public issue about which Members of Congress routinely comment. The issue in the case is not which side was right or wrong, but whether Congressmen may comment at all on such matters.

As the divided court ruled in the matter, a Congressman has no official immunity for his statements on official matters. Judge Mikva, in his dissent, points out that under that ruling:

> Congressmen cannot also qualify for the immunity that courts have given to postmen. Today's holding not only ignores precedent, but does damage to our governmental structure.

It astonishes me that a Federal court could say that every other official of the Federal Government receives official protection, but Members of Congress do not, when speaking out on public issues within their responsibilities.

I sincerely hope that the Supreme Court will review this case and in its most careful manner will reverse the lower court decision. It does go to the basic fundamentals of our guarantees as Members of Congress, and I do think this is a forerunner of what could be a whole number of this type of lawsuits being brought against Members of Congress to tie us up and to shut us up. If we do not take active part in this appeal before the Supreme Court and get a favorable ruling by the Supreme Court, the door is wide open, and there will be no end to this sort of thing.

It is a very important part of our responsibility as a Member of Congress to be able to speak out on these public issues. I urge the House to give this overwhelming and in fact hopefully a unanimous vote.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FOLEY. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. GORDON). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FOLEY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 413, nays 0, answered "present" 2, not voting 16, as follows:

[Roll No. 128]

YEAS—413

Ackerman
Akaka
Alexander
Anderson
Andrews
Annunzio
Anthony
Applegate
Archer
Armey
Aspin
Atkins
AuCoin
Badham
Baker
Ballenger
Barnard
Bartlett
Barton
Bateman
Bates
Beilenson
Bennett
Bentley
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bliley
Boehlert
Boggs
Boland
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Brennan
Broomfield
Brown (CA)
Brown (CO)
Bruce
Bryant
Buechner
Bunning
Burton
Bustamante
Byron
Callahan
Campbell
Cardin
Carper
Carr
Chandler
Chapman
Chappell
Cheney
Clarke
Clay
Clement
Clinger
Coats
Coble
Coelho
Coleman (MO)
Coleman (TX)
Collins
Combest
Conte
Conyers
Cooper
Coughlin
Courter
Coyne
Craig
Crane
Crockett
Dannemeyer
Darden
Daub
Davis (IL)
Davis (MI)
DeFazio
DeLay
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
DioGuardi
Dixon
Donnelly
Dorgan (ND)
Dowdy
Downey
Dreier
Durbin
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Edwards (OK)
Emerson
English
Erdreich
Espy
Evans
Fascell
Fawell
Fazio
Feighan
Fields
Fish
Flippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Frank
Frost
Gallo
Garcia
Gaydos

Gejdenson
Gekas
Gephardt
Gibbons
Gilman
Gingrich
Glickman
Gonzalez
Goodling
Gordon
Gradison
Grandy
Grant
Gray (IL)
Gray (PA)
Green
Gregg
Guarini
Gunderson
Hall (OH)
Hall (TX)
Hamilton
Hammerschmidt
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Herger
Hertel
Hiler
Hochbrueckner
Holloway
Hopkins
Horton
Houghton
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Inhofe
Ireland
Jeffords
Jenkins
Johnson (CT)
Johnson (SD)
Jones (NC)
Jones (TN)
Jontz
Kanjorski
Kaptur
Kasich
Kastenmeier
Kemp
Kennedy
Kennelly
Kildee
Kleczka
Kolbe
Kolter
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Latta
Leach (IA)
Leath (TX)
Lehman (CA)
Lehman (FL)
Leland
Lent
Levin (MI)
Levine (CA)
Lewis (CA)
Lewis (FL)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken, Thomas
Lukens, Donald
Lungren
Mack
MacKay
Madigan
Manton
Markey
Marlenee
Martin (IL)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCandless
McCloskey
McCollum
McCrery
McCurdy
McDade
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
Meyers
Mfume
Michel
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Molinari
Mollohan
Montgomery
Moody
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers

Nagle
Natcher
Neal
Nelson
Nielson
Nowak
Oakar
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Panetta
Parris
Pashayan
Patterson
Pease
Pelosi
Penny
Pepper
Perkins
Petri
Pickett
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray
Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Rodino
Roe
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiki
Savage
Sawyer
Saxton
Schaefer
Scheuer
Schneider
Schroeder
Schuette
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Shumway
Shuster
Sikorski
Sisisky
Skaggs
Skeen
Skelton
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith, Denny (OR)
Smith, Robert (NH)
Smith, Robert (OR)
Snowe
Solarz
Solomon
Spratt
St Germain
Staggers
Stallings
Stangeland
Stark
Stenholm
Stokes
Stratton
Studds
Stump
Sweeney
Swift
Swindall
Synar
Tallon
Tauke
Tauzin
Taylor
Thomas (CA)
Thomas (GA)
Torres
Torricelli
Towns
Traficant
Traxler
Udall
Upton
Valentine
Vander Jagt
Vento
Visclosky
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weber
Weiss
Weldon
Wheat
Whittaker
Whitten
Williams
Wilson
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yatron
Young (AK)
Young (FL)

NAYS—0

ANSWERED "PRESENT"—2

Jacobs	Sundquist

NOT VOTING—16

Biaggi	Flake	Mica
Boulter	Frenzel	Nichols
Brooks	Gallegly	Spence
de la Garza	Hansen	Yates
Dornan (CA)	Hoyer	
Duncan	Konnyu	

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

○